I should have thought that the finding of the learned judge ought not to be disturbed."

In *Ormrod v. Crosville*[3] the facts were as follows: While the owner of a motor car was attending the Monte Carlo motor car rally, a friend of his, under an arrangement made between them, was to drive the owner's car from Birkenhead to Monte Carlo; he was to carry a suit case belonging to the owner of the car, was to make the journey in his own time, was to visit friends in Bayeux and was to arrive in Monte Carlo before the end of the rally; thereafter he and the owner of the car were to go on holiday with the car to Switzerland; while on the direct route from Birkenhead to the coast to cross to France, owing partly to the negligence of the friend, the car collided with a motor omnibus which was damaged. It was held that at the time of the accident the car was being used wholly or partly for the car owner's purposes, and, therefore, the friend, while driving it, was the agent of the owner, and, in so far as the friend was guilty of negligence, the owner was vicariously liable therefor.

Devlin J. the trial Judge, in holding that the friend was the agent of the owner of the motor car said:—

"It is clear that there must be something more than the granting of mere permission in order to create liability in the owner of a motor car for the negligence of the driver to whom it has been lent, but I do not think that it is necessary to show a legal contract of agency. It is an area between the two that this case is to be found, and it may be described as a case where, in the words of du Parcq, L.J., there is a 'social or moral' obligation to drive the owner's car".

Devlin J.'s judgment was affirmed on appeal; Denning L.J. said at p. 754:—

"It has often been supposed that the owner of a vehicle is only liable for the negligence of the driver if that driver is his servant acting in the course of his employment. That is not correct. The owner is also liable if the driver is his agent, that is to say, if the driver is, with the owner's consent, driving the car on the owner's business or for the owner's purposes.

And later at p. 755:—

"If it is being used wholly or partly on the owner's business or for the owner's purposes, the owner is liable for any negligence on the part of the driver. The owner only escapes liability when he lends it or hires it to a third person to be used for purposes in which the owner has no interest or concern."

In the present case I do not consider that it can be said that the motor vehicle was used by the first defendant for purposes in which the owner, the second defendant had no interest or concern. At the time the vehicle was being used for the purpose of enabling the first defendant to learn driving for which purpose the first defendant had paid a fee to the second defendant and the latter had provided an instructor on such vehicle. The second defendant cannot therefore escape liability and is vicariously liable for the negligence of the first defendant.

As to the amount of damages; the disfigurements on face and elbow are not at all serious and although the plaintiff suffered pain for a time he is not likely to be permanently disabled. I therefore assess the damages at $500.

Judgment for plaintiff for $500 and costs against both defendants.

Judgment for the plaintiff.

Solicitors: *Lovelace & Hastings; Shearn, Delamore & Co.*

ONG BAK HIN v. GENERAL MEDICAL COUNCIL

[P. C. (Lord Oaksey, Lord Tucker, Lord Cohen, Lord Keith of Avonholm and Mr. L. M. D. de Silva) April 24, 1956]

[Privy Council — Appeal No. 50 of 1955]

Medical Practitioner — Infamous conduct — Hearing before Medical Disciplinary Committee — Evidence — Conviction in criminal Court in Malaya — Admissibility in evidence of record of criminal proceedings — Statutory powers of Medical Disciplinary Committee.

The appellant, Dr. Ong Bak Hin, a registered medical practitioner practising in Malaya, performed an operation of abortion on a Chinese woman which caused her death. He was convicted in the High Court at Malacca and sentenced to imprisonment. At a subsequent inquiry before the Disciplinary Committee of the General Medical Council in England, the committee decided that the attendance of witnesses from Malaya was not practicable and, accordingly, the solicitors on each side agreed to the committee proceeding on the documentary evidence of the trial. The committee decided that the doctor had been guilty of infamous conduct and that his name should be struck off the medical register.

Held: (1) the record of the criminal proceedings having been put in evidence by consent as soon as the committee had decided, quite properly, that the attendance of the witnesses from Malaya was not practicable and that their absence did not vitiate the proceedings, that consent was fatal to any objection to it; (2) there had been no miscarriage of justice, since the copy of the record of proceedings was properly admissible, subject to the Medical Disciplinary Committee (Procedure) Rules, 1951, because the disciplinary committee, as a domestic forum but not a Court of law, had duty to make due inquiry whether the appellant had been guilty of infamous conduct in a professional respect.

Dicta of Viscount Simon, L. C. Lord Atkin and Lord Wright in General Medical Council v. Spackman[1] applied.

Cases referred to:—

(1) *General Medical Council v. Spackman* (1943) A.C. 627; (1943) 2 All E.R. 337.

(2) *Edmonds v. Edmonds & Rogers* (1947) P. 67.

(3) *Bullock v. Borrett* (1939) 1 All E.R. 505.

(4) *Barkway v. South Wales Transport Co.* (1949) 1 K.B. 54; (1948) 2 All E.R. 460 reversed on other grounds H.L., (1950) A.C. 185; (1950) 1 All E.R. 392.

The following cases, in addition to those referred to in the judgment, were cited in argument: *Mechanical & General Inventions Co. & Lehwess v. Austin & the Austin Motor Co.* (1935) A.C. 346; *Council of the Municipality of Brisbane v. Martin* (1894) A.C. 249; *Har Prasad Singh v. Judges of the High Court at Allahabad* L.R. 58 I.A. 152.

PRIVY COUNCIL APPEAL, Appeal from a determination of the Medical Disciplinary Committee of the General Medical Council.

The following facts are taken substantially from the judgment of the Judicial Committee: In this case the appellant, Dr. Ong Bak Hin, who had been at all material times a medical practitioner registered under the Medical Acts, appealed to Her Majesty in Council under section 20 of the Medical Act, 1950, from a determination of the Medical Disciplinary Committee on November 25, 1955, that he had been guilty of infamous conduct in a professional respect and that the Registrar be directed to erase his name from the register.

This determination was arrived at after an inquiry which had been held as a result of information as to the conduct of the appellant sent to the General Medical Council by the Director of Medical Services for the Federation of Malaya in accordance with rule 12(2)(b) of the Medical Disciplinary Committee (Procedure) Rules, 1951 (S.I. No. 665 of 1951).

The conduct referred to in the information supplied to the council was to the effect that the appellant had been convicted and sentenced by the Supreme Court of Malacca on August 14, 1953, for performing an operation with intent to cause miscarriage which caused death contrary to section 314 of the Penal Code.

The formal charge before the Disciplinary Committee alleged that on May 18, 1953, the appellant, being registered under the Medical Acts, with intent to cause the miscarriage of Tee Bee Geok, unlawfully performed an operation of abortion which caused her death and thereby committed an offence under section 314 of the Penal Code of which he was convicted in the High Court at Malacca on August 14, 1953, and sentenced to five years' imprisonment (reduced on appeal to two years), and concluded with the words: "And that in relation to the facts alleged you have been guilty of infamous conduct in a professional respect."

At the inquiry Mr. Widgery, a solicitor, appeared to place the facts before the committee, and the appellant was represented by Mr. Taylor, of Messrs. Hempsons, solicitors. The committee had the advice of a legal assessor.

The evidence adduced in support of the charge consisted of a statutory declaration by the Registrar of the Court of Appeal for the Federation of Malaya to which were exhibited: (a) A certificate by the Assistant Registrar of the Supreme Court of Malacca of the conviction on August 14, 1953; (b) The record of the hearing in the High Court consisting of: (1) The charge, (2) Notes of evidence made by the trial Judge, (3) Judge's reasons for sentence, (4) List of exhibits at the trial, (5) Statement of deceased woman dated May 22, 1953, being Ex. P. 1 at trial, (6) Extracts from medical textbooks put in at trial, (7) Copies of notice and petition of appeal to Court of Appeal of Federation of Malaya, (8) Certified copies of order and judgment of Court of Appeal.

The copies of the record of the hearing in the High Court at Malacca provided for the members of the Disciplinary Committee had been "edited" by the deletion of certain passages in the evidence which the legal assessor considered would not have been admissible in a criminal court in England and certain further passages at the request of the appellant's solicitor. The summing up of the Judge at the trial was also omitted.

The appellant appeared and gave evidence and was cross-examined at the inquiry. He contended, *inter alia*, that before he began the operation he believed that pregnancy had already terminated, and that the remnants had to be cleared. The whole purpose of the operation, he said, was thus limited, and the products of conception removed did not include any piece or pieces of a foetus.

At the conclusion the President announced the decision of the committee to the effect that the appellant was adjudged to have been guilty of infamous conduct in a professional respect and that the Registrar had been directed to erase his name from the register.

J. R. Cumming-Bruce (*R. Barr* with him) for the appellant.

J. G. S. Hobson for the respondent.

Lord Tucker (delivering the judgment of their Lordships stated the facts set out above and continued): — At the inquiry the appellant's solicitor submitted at the outset that justice could not be done to his client unless the witnesses who had given evidence at his trial were called to give oral evidence before the committee. He agreed that the documentary evidence was admissible, but contended that the committee in their discretion should exclude it in the interests of justice. He expressly stated that he did not ask for an adjournment. The legal assessor pointed out that the committee had no power to compel the attendance of witnesses from Malaya and advised the committee to proceed on the documentary evidence. Certain passages were then deleted or covered up at the request of the appellant's solicitor and in this form the record of the criminal proceedings was put in. The solicitors on each side drew the attention of the committee to such portions of the evidence as they considered relevant, but it was agreed that the committee should be at liberty to look at any parts they wished and the desirability of the whole of the evidence of one of the witnesses, *viz.*, Dr. Bennett, being read was stressed.

It was contended before their Lordships by counsel for the appellant that the proceedings at the inquiry outlined above were defective and not strictly in accordance with the rules of procedure to which reference will shortly be made, and that the determination of the committee should be set aside. He said that the notes of evidence given by Dr. Bennett should not have been received unless the committee were

satisfied that an attempt had been made to secure his personal attendance and that he had refused to attend. He further submitted that if the notes of evidence were received they should all have been read out before the committee and that failing this the committee should have read the entire evidence themselves which, he said, they could not have done in the time available having regard to the length of the hearing and the short mid-day adjournment.

It will be convenient here to refer to the relevant sections of the Medical Acts and the Rules of Procedure made thereunder.

Section 29 of the Medical Act, 1858, as amended by the Medical Act, 1950, reads :—

"If any registered medical practitioner shall be convicted by any Court in the United Kingdom or the Republic of Ireland of any felony, misdemeanour, crime or offence, or shall, after due inquiry, be judged by the general council to have been guilty of infamous conduct in any professional respect, the general council may, if they see fit, direct the registrar to erase the name of such medical practitioner from the register."

By section 14 of the Medical Act, 1950, the functions of the General Medical Council under section 29 of the Medical Act, 1858, were transferred to and become exercisable by the Medical Disciplinary Committee.

By section 16 of the Medical Act, 1950, the Medical Disciplinary Committee were required to make rules as to procedure and evidence, to be approved by the Privy Council. The Medical Disciplinary Committee (Procedure) Rules, 1951, were approved by Order in Council and are Statutory Instrument No. 665 of 1951.

Rule 28 of these Rules, under the heading "Cases relating to conduct — proof of Charges," provides :—

"28. In cases relating to conduct where the practitioner appears, the following order of proceedings shall be observed as respects proof of the charge or charges:— (a) If a complainant appears, he shall open the case against the practitioner. If no complainant appears, the solicitor shall present the facts on which the complaint or information is based. (b) Next the complainant, if any appears, or if no complainant appears, the solicitor shall adduce evidence of the facts alleged in the charge or charges or such of those facts as he is prepared to prove."

Rule 63 reads :—

"The Committee may receive any such oral or other evidence as would be receivable in a Court of law, and in addition may, after consultation with the assessor to the committee, treat any statement of fact contained in any document as evidence of that fact."

The position of the General Medical Council in relation to its disciplinary powers under the Medical Act of 1858 was considered by the House of Lords in proceedings by way of *certiorari* in *General Medical Council v. Spackman*[1]. Viscount Simon L.C., after referring to section 29 of the Act of 1858, said :—

"That section draws a significant distinction between a case in which the impeached practitioner has been convicted of felony or misdemeanour and a case in which the allegation of infamous conduct is not connected with a criminal conviction. In the former case, the decision of the council is properly based on the fact of the conviction, and the practitioner cannot go behind it and endeavour to show that he was innocent of the charge and should have been acquitted. In the latter case, the decision of the council, if adverse to the practitioner, must be arrived at 'after due inquiry,' and this of course means after due inquiry by the council."

After referring to the refusal of the council to hear evidence tendered with a view to showing that the practitioner was not guilty of the adultery of which he had been found guilty by the Divorce Court, he proceeded :—

"It is worth observing that this problem does not arise only in connection with conclusions reached in the Divorce Court. A jury's verdict of justification in proceedings for slander, judgment for the plaintiff in an action for seduction, a bastardy order made by a bench of magistrates — all these, and many other, instances of adverse conclusions reached in a court of law might conceivably in certain circumstances lead to a charge against a medical man of infamous conduct in a professional respect. It seems obvious, in these other instances, that, while the council might well treat the conclusion reached in the Courts as *prima facie* proof of the matter alleged, it must, when making 'due inquiry' permit the doctor to challenge the correctness of the conclusion and to call evidence in support of his contention . . . . . This does not mean that the council has to rehear the whole case by endeavouring to get the previous witnesses to appear before it, though in special circumstances the recalling of a particular witness, in the light of what the accused or his witnesses assert, may, if feasible, be desirable. The council will primarily rely on the sworn evidence already given at the trial."

Lord Atkin said :—

"It is not disputed that where there has been a trial, at least before a High Court Judge, the notes of the evidence at such trial and the judgment of the Judge may afford *prima facie* evidence in support of the charge . . . . ."

Lord Wright said :—

"The council very properly have treated the decree of the Divorce judge as *prima facie* evidence. So it is, and very strong evidence too, especially considering that the respondent did not appeal but paid the £1,000 of damages awarded against him . . . . Most of the cases before the council must involve questions of fact which they have to decide as best they can. It can only be in comparatively rare cases that the cause of complaint is a matter which has been decided in a Court of law other than by a conviction for felony or misdemeanour. The decision of the Court should, indeed, ease that duty, because the proceedings and judgment of the Court at least give the council *prima facie* evidence which may be for practical purposes unanswerable by the practitioner."

That case concerned a finding of adultery which at that time was not conclusive. The law in that respect has now been altered, but the observations of the noble Lords in that case are — subject to the effect of the Rules of procedure — in their Lordships' opinion applicable to such a case as the present where the conviction, not having taken place in the United Kingdom or the Republic of Ireland, is only *prima facie* evidence of the infamous conduct alleged.

In so holding their Lordships have not lost sight of the changes produced by the Medical Act, 1950, in the position of the Medical Disciplinary Committee, as compared with the General Medical Council under the Act of 1858, whereby they are now empowered to compel the attendance of witnesses and the production of documents, to administer oaths, and are required to make rules as to procedure and evidence which have statutory force, and by which a right of appeal from their determination is given. They are, however, not a Court of law but a domestic forum charged in certain cases, of which the present is one, with the peculiar duty of making "due inquiry" into the circumstances attending the conviction in a distant country of a medical practitioner with a view to deciding — of which they alone are the Judges — whether he has been guilty of infamous conduct in a professional respect. This duty they cannot adequately perform unless they are in possession of the whole of the proceedings in the criminal Court in which the conviction occurred. It would be unfortunate if they have precluded themselves from so functioning by the Rules which they have made, and in particular by rule 63. It is not easy to decide whether the whole of the proceedings in Malaya would have been "receivable in a Court of law." No Court of law in this country is charged with precisely the same function as that entrusted to the Committee and the admissibility of documents may depend upon the precise issue before the Court. The record of proceedings is, in their Lordships' opinion, a "document" within the meaning of the second limb of rule 63 (see decisions under the Evidence Act, 1938 — which it may however be noted does not apply to Scotland — in *Edmonds v. Edmonds & Rogers*[2] *Bullock v. Borrett*[3] and *Barkway v. South Wales Transport Co.*[4]). The admissibility of such documents is, however, limited to the statements of fact contained therein, and such a restriction may render the task of the committee and legal assessor extremely difficult in dealing with the record of proceedings in the criminal Court and would exclude the Judge's charge to the jury and other parts of the record which it is clearly desirable that the committee should see.

In the present case the record, with certain excisions, was put in by consent as soon as the committee had quite properly decided that the attendance of the witnesses from Malaya was not practicable and that their absence did not vitiate the proceedings. The consent to the admission of the record is fatal to any objection on this score now being put forward before the Board, nor do their Lordships consider there is any substance in the contentions that the whole of the evidence was not read out in Court or that it was incumbent upon the committee to read portions not considered by either side to have sufficient relevance to require the attention of the committee to be directed thereto.

Their Lordships desire, however, to draw the attention of those concerned to the desirability of an alteration in the Rules of Procedure whereby the committee can be empowered beyond all question to receive in evidence and examine the whole of the officially authenticated proceedings of the convicting Court in this class of case.

For the reasons stated above their Lordships are of opinion that there has in this case been no miscarriage of justice and they have accordingly humbly advised Her Majesty that this appeal should be dismissed.

Appeal dismissed.

Solicitors: *Hempsons; Waterhouse & Co.*

PUBLIC PROSECUTOR v. WEE EH TIANG

[A. Cr. J. (Rigby J.) April 18, 1956]

[K. B. — Criminal Reference No. 1 of 1956]

Criminal trial — Charge — Making false statement — Criminal Procedure Code (Cap. 6), s. 112 — Penal Code s. 193 — Evidence Ordinance, 1950, s. 155.

Criminal Procedure Code (Cap. 6) — Reservation of points of law for consideration of High Court from subordinate Courts in the Malay States — s. 5 of the States Criminal Procedure Code.

The accused in this case was charged, in the alternative, under s. 193 of the Penal Code, with intentionally giving false evidence in that he made two contradictory statements, one of which statements he either knew or believed to be false or did not believe to be true. The particulars of the charge disclosed that in the course of a police investigation under s. 112 of the Criminal Procedure Code (Cap. 6) the accused, in reply to a question put to him by the police investigating officer, stated: "After I saw my daughter Wee Kim Hoon injured in the stomach as a result of a stab, and my daughter told me that her husband Eng Hong stabbed her with a knife." Subsequently, however, at the trial of Eng Hong on a charge of unlawful wounding, the present accused stated in evidence before the Magistrate: "I saw blood on her (meaning Wee Kim Hoon's) stomach. She told me she had been stabbed by someone. She did not tell me who stabbed her." As a result of those contradictory statements the charge under s. 193 of the Penal Code was preferred against the accused. At the trial the accused desired to plead guilty to the charge, but the learned Magistrate declined to accept his plea on the ground that both the accused's statement to the police and his evidence before the trial Court were hearsay and inadmissible in evidence and, accordingly, could not form the basis of a criminal charge against the accused.